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THE
YAZOO LAND COMPANIES

by

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I N T R O D U C T I O N.

The spirit of speculation in land was a prominent characteristic of the United States at the close of the last century. Although the Crown had received frequent petitions for land grants in the West, the Revolution marks the real beginning of western migration. The number of emigrants, the changes of the laws, and the lack of an established system of sale in small quantities all rendered inducements for the formation of great land companies, whose opportunities for speculation were increased by the depreciated currency and the general ignorance with regard to the West. So strong had this spirit of speculation grown that in 1790 an English traveller could say, "Were I to delineate the United States, it shoul be by the application of the line of speculation".¹ In spite of its exasperation Priest's American Contingency truth. "All I am now worth was gained by speculation in land", wrote Timothy Pickering in the same year, and many public men could have said the same, often in less dismal later experience quite similar. Land speculation involved Washington, Hamilton, Franklin, Jefferson, Patrick Henry, George Morris, and James Wilson,

¹ Priest's Travels, 13. Cf. also L. H. Hennings' U.S. Travel (London edition of 1800), III, 14, IV, 7-17, and Mullan's Travels, 28, 308, 311.

² Pickering's Pickering, III, 274.

as will probably long since be known.

Legal complications followed, a provisionally inviting him into the South, where large debts of 100,000 dollars remained in the hands of the Southern Secessionists. Scarcely a State escaped his operations, and the most effective operations were carried on in Georgia, where the members of the legislature, the agents which were employed, the resistance of the State, the primitive tools of the parchment, obtain in ratification, and the final separation of Congress and the Supreme Court, all united to form an independent chapter of history.

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T H E W E S T E R N T E R R I T O R Y O F G E O R G I A .

At the close of the Revolution the territory north of the thirty-first parallel which is now included in the States of Alabama and Mississippi was the subject of various conflicting claims. South Carolina contended that this territory was comprised within the limits of her original charter; Georgia claimed it by virtue of the commissions issued to Governor Wright; the United States maintained that it had been withdrawn from the domain of the colonies by later acts of the Crown, conquered by the nation in the Revolution, and ceded to the nation by the treaty of peace; while Spain denied England's right to cede lands below 32° 30' and held that region as a conquest from England. Georgia's assertion of title, re-enforced in 1787 by the withdrawal of South Carolina,¹ was resisted by the federal authorities. In 1788 a proposed cession of territory below 32° 30' was rejected by Congress because it contained as a condition the guarantee of the remainder, and in 1797 a committee of the Senate made a report strongly adverse to the State's claim.² The final victory, however, remained with Georgia. In the compromise of 1802 all her demands were acceded

- 1 Except from a narrow strip on the north, soon ceded to the United States. Spain relinquished her claim in 1795.
- 2 Journals of Congress, IV, 834; American State Papers, Public Lands, I, 79.

to, and in 1827 the validity of her title was affirmed by the Supreme Court in an opinion which thus sums up the matter: "There are several reasons for putting the claim of the United States out of the question. She has abandoned it, and it is very clear could never have sustained it. The very ground on which she denied the capacity of Spain to conquer or take by cession, the territory on the Mississippi, was fatal to the pretensions set up by her against Georgia and South Carolina, to wit, that Spain could not acquire by conquest a territory within the limits claimed by an ally in the war. x x x x There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore there could be no acquisition of territory made by the United States distinct from, or independent of some one of the States".¹

Aside from the question of Georgia's title to the lands, there were serious difficulties in the way of making use of them. They were occupied by the Chickasaws, Choctaws, Cherokees, and Creeks, and over these tribes the federal government claimed and exercised an immediate protectorate. "No one could say what was

¹ Harcourt vs. Gaillard, 12 Wheaton, 523. See also the arguments presented in Morse's Description of Georgia Western Territory, 19-24, and cf. Fletcher vs. Peck, 3 Cranch, 87. The documents bearing on Georgia's claim were collected by the Attorney-General in 1796 and are printed in State Papers, Public Lands, I, 34-67.

the value of Georgia's title, for it depended on her power to dispossess the Indians; but however good the title might be, the State would have been fortunate to make it a free gift to any authority strong enough to deal with the Creeks and Cherokees alone".¹ The attacks of the southern Indians on frontier settlements were kept up by the intrigues of the Spaniards, themselves sure to oppose by force all attempts to settle the region south of the Yazoo. The value of western lands for commercial and agricultural purposes depended almost entirely on the navigation of the Mississippi, over which Spain exercised sole control. So strongly was this felt in the West that to gain the right to navigate the Mississippi many were willing to leave the Union and become Spanish subjects. In the light of these difficulties Georgia was quite ready to reap a small financial gain by disposing of the lands on the first offer of favorable conditions.

¹ Henry Adams' History of the United States, I,303.

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I.

THE LAND COMPANIES OF 1739.
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THE SOUTH CAROLINA YAZOO COMPANY.

The advantages of a commercial settlement on the Mississippi near the mouth of the Yazoo were readily apparent. The only obstacle seemed to be the opposition of Spain and the Indians, and to remove this a number of citizens of South Carolina and Georgia directed their efforts. At present they reckoned without the United States, and thus, as events proved, without their host. In 1785 application was made to Georgia for a grant of lands. As that State "did not yet feel ready to dispose of her territory", nor, doubtless, to protect it against the Indians and Spaniards, all that was obtained was the organization of a county to be known as Rourbon, in which when lands were granted out actual settlers were to have the preference at a price not exceeding a quarter of a dollar an acre. This county, which continued in existence three years, was bounded by the Mississippi, the Yazoo, the thirty-first parallel, and the limit of the territory relinquished by the Indians.¹ The consent of the Choctaws to the proposed establishment was sought by the purchase from one John Wood of a deed he had obtained from them to a tract of two or three million acres lying near the mouth of the Yazoo. For colonists the projectors

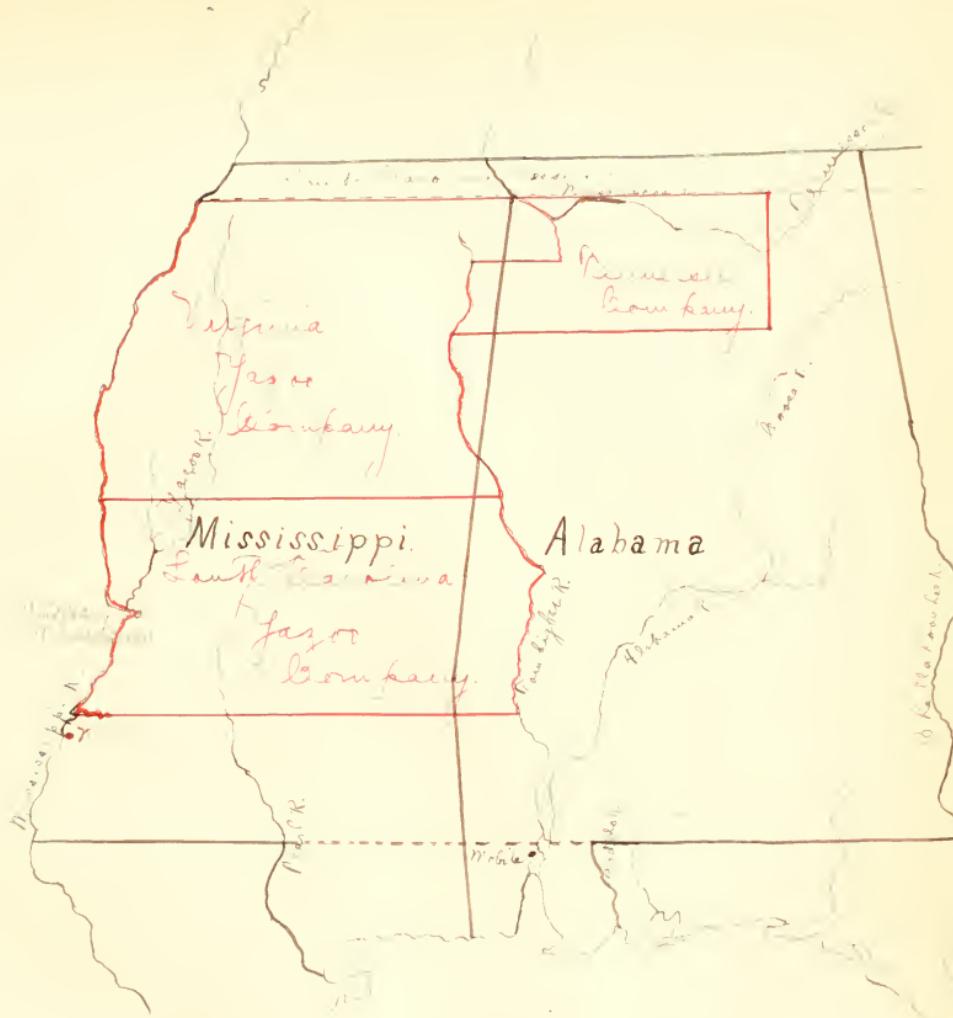
¹ State Papers, Public Lands, I, 100.

naturally looked toward Kentucky, whence John Holder ¹ engaged to conduct four hundred families to Walnut Hills (now Vicksburg) before the end of 1789, but in the execution of this contract he failed entirely. In the meantime the original plan of the projectors had been enlarged, largely through the influence of Major Thomas Washington. ² Articles of association were drawn up and adopted, constituting a company to be known as the South Carolina Yazoo Company. The original members were but four in number, Washington, of Georgia, and Alexander Moultrie, William Clay Snipes, and Isaac Huger, of South Carolina, Moultrie being appointed director. Among those who joined later was the famous Creek chief Alexander McGillivray. To the former idea of a commercial station there was now added the plan of securing an extensive territory and opening it to agricultural settlers. ³

¹ A noted pioneer captain in the Revolution. Collins' History of Kentucky, I, 13, 255; Forman's Narrative of a Journey down the Ohio and Mississippi, 52 note.

² Washington, whose real name was Walsh, was an unprincipled speculator, later hanged at Charleston for counterfeiting South Carolina indents (Georgia Gazette, March 24, 31, 1791). He seems to have been closely associated with John Sullivan, leader of the mob which insulted Congress in 1783, who planned operations against Spain or the United States with equal facility. See White's Statistics of Georgia, 48; Gayarré's History of Louisiana (edition of 1885) III, 213; Haywood's Civil and Political History of Tennessee, 176; Magazine of American History, III, 45; Diplomatic Correspondence, 1783-1789, I, 12, 37, 50.

³ Report of the Secretary of the South Carolina Yazoo Company I, 13-23, 25; Gayarré's Louisiana, III, 272, 273.



Fayoo County 1779.

T H E G R A N T O F 1789.

Accordingly on November 20, 1789, a petition was presented to the Georgia Legislature. It set forth that the company, having already commenced a settlement under the Bourbon act, desired a confirmation of that interest. In this they were actuated "as well from a motive of general good to mankind and a happiness and prosperity of this State and the union, as their own". They had "in respect to their own settlements established Connections in Europe, America, and in this State; whereby it is certain that x x x x an affrican trade and European Commerce will take place at the Yazoo to an immense and vast amount".¹ Applications were at the same time received from the Virginia Yazoo and the Tennessee companies. A bill was brought into the Senate and after amendment it passed on December 7 by a vote of six to three. When it reached the House, there appeared another set of petitioners, the Georgia Company, offering a much higher price for the lands. Efforts to insert this company among the other applicants failed, as did also a motion to increase the amount to be paid, and the bill passed without amendment and received the Governor's signature on the twenty-first of December.²

¹ Papers of U.S. Supreme Court, Moultrie et al. vs. State of Georgia et al., H.

² Georgia Gazette, January 7, 1790.

This act granted to the South Carolina Company a tract bounded by the Mississippi, the thirty-third parallel, the Tombigbee, and a line drawn east from a point just above Natchez, containing over 10,000,000 acres of what is now southern Mississippi and Alabama.¹ The Virginia Company received 11,400,000 acres, being all the land west of Little Bear Creek and the Tombigbee and north of the thirty-third parallel. The Tennessee Company's grant included 4,000,000 acres in the region of the Tennessee. The lands in each case were to be reserved as a pre-emption for two years, and at the end of that period on the payment of the stipulated amounts grants were to issue to the companies as tenants in common in fee simple. The amounts to be paid were: South Carolina Company, \$66,964; Virginia Company, \$93,741; Tennessee Company, \$48,571. The companies were also to extinguish the Indian claims, nor was the State to be put to any expense in keeping the peace between them and the Indians or made liable for the claims of previous settlers.²

¹ See map, page 1.

² American State papers, Indian Affairs, I, 114; Watkins' Georgia Digest, 387; Document A, Supreme Court papers.

J A M E S O'F A L L O N , A G E N T O F T H E C O M P A N Y .

The South Carolina Company at once began active measures toward forming a settlement. As their agent in the West they selected Dr. James O'Fallon, an old Revolutionary soldier, whom they likewise admitted as a proprietor. He was instructed to proceed at once to Lexington, Kentucky, to bring Holder to account, and, if it could be done peaceably, to go down to the Walnut Hills with four or five hundred settlers. He should be careful to cultivate the friendship of the Indians, and after effecting a settlement should proceed to New Orleans and "take every possible step for securing the concurrence and favor of the Spanish Government". He also received private instructions, the contents of which are not known. 1 Edmund Phelon was soon afterward sent to the Yazoo country to prepare the Choctaws for the intended settlement. 2

O'Fallon set out in February, 1790, reaching Lexington about the beginning of May. On his way he secured the co-operation of General McDowell of North Carolina, of Colonel Farr of South Carolina, and particularly of John Sevier, who undertook to act as sub-agent for the Tennessee settlements. Each was prom-

1 Secretary's Report, I, 26, 27.

2 See his deposition, State Papers, Public Lands I, 166.

ised a share in the company's purchase. 1

R E L A T I O N S W I T H S P A I N.

On his arrival in Kentucky, O'Fallon was brought into close relations with General James Wilkinson and thus entered the maze of Spanish intrigues. Wilkinson was attempting to effect the separation of Kentucky from the union and for his services received a regular pension from Spain. Informed of the company's designs by Major Washington in February, 1789, he had discussed the subject with Miro, the Spanish governor, and wrote the company, offering to supply their need of a man of experience and popularity who should act as agent and secure the assistance of Miro, without which the enterprise would be wholly impracticable. They must, he said, obtain through Spain further concessions from the Indians, for their Choctaw deed was not worth a pinch of snuff. 2

¹ Secretary's Report, 26, 30, 31. These measures, as well as the later grants to Kentuckians, were approved by the company, but never formally confirmed.

² Wilkinson to Moultrie, Huger, Snipes, and Washington, January 4, 1790. A translation of the original, copied from the archives of Spain, is in the library of Tulane University. Part of it has been re-translated by Gayarré (III, 274). The version in the Secretary's Report (I, 24) differs somewhat from the Spanish copy.

For an account of the interesting history of the Tulane University collection see Gayarré's letter in the Times-Democrat of June 3, 1883, and his communication to Congress (House Misc. Docs., 46th Congress, second session, Vol. II, No. 22).

Moultrie promptly accepted the offer of Wilkinson's services, but informed him that the agency had already been granted. Of this letter O'Fallon was the bearer. 1

Wilkinson had informed Miro of the company's designs and had been told that the territory of company's grant, so far as it did not belong to the Indians, was subject to Spain and would remain so. 2 Convinced of the necessity of gaining over Miro, O'Fallon wrote him a remarkable letter. After setting forth pompously his relations to the company and his well-known devotion to the interests of Spain, he says that, having long ago conceived this great project, he had enlisted in it the members of the company and obtained from them plenary powers for its execution. Without their having at first suspected his object, he had "insensibly prevailed upon them to acquiesce in "his" political views (after obtaining the concession), and led them to consent to be the slaves of Spain, under the appearance of a free and independent colony, forming a rampart for the adjoining Spanish territories, and establishing with them an eternal, reciprocal alliance, offensive and defensive". Separation from the Union had been resolved upon. In return for her secret co-operation Spain would

1 Secretary's Report, I, 24, 25; Gayarre, III, 261.

2 Letters of January 20 and April 30, Gayarre III, 276, 282.

receive everything except the sacrifice of their liberty of conscience and of their civil government. O'Fallon's authority for these statements would appear when he arrived in New Orleans and transmitted his secret instructions. 1 Not long afterward, Wilkinson wrote to Miro, endorsing O'Fallon's plans and adding, "If the sentiments which he invariably expresses are to be believed (and I am inclined to put faith in them), he is a great friend to Spain." 2

In August Miro sent to Madrid copies of all this correspondence together with his comments upon it. He showed the advantages of such a settlement in defending Louisiana against the United States and in extending the commerce of New Orleans, yet he doubted the policy of "taking a foreign state to board". All the benefits of such a settlement, he argued, could be secured if Spain would people the territory on her own account. In case a middle course was desired, it might be proper to permit the company to colonize the territory as subjects of Spain and under the regulations imposed upon all immigrants. Miro added that he had secured the opposition of all the Indian tribes to

1 Lexington, May 24. Spanish MSS., Tulane University; almost entire in Gayarré, III, 285-293. O'Fallon signs himself "Santiago O'Fallon, Agente General en los Establecimientos Occidentales de la Carolina del Sur en el Yasu".

2 Gayarré, III, 293.

the three land companies and had promised to supply the Indians with powder and ball for the defence of their rights. 1

How far the South Carolina Company was involved in intrigues with Spain is difficult to determine. As early as October, 1789, they had written to Colonel Holder to cultivate the friendship of the Spaniards as much as possible and conceal nothing from them. "We confidently flatter ourselves" said they, "that we shall form a highly advantageous rampart for Spain, and that we shall ourselves feel that it is our interest that such should be the case". 2 This letter contained nothing which indicated the least subordination to the United States, and Miro inferred from it that the company intended to form an independent state. In the elaborate plan of colonization afterward drawn up by the secretary they were recommended to procure an efficient civil establishment from Georgia and, when the population should reach sixty thousand, to form a new state under the laws of the Union. 3 Small weight, however, should be attached to these expressions, since the pamphlet in which they are found was designed for the eye of the federal authorities and the plan represents at best

1 Gayarré, III, 293-300.

2 Gayarré, III, 273.

3 Report of the Secretary, III, 9, 12.

only the opinions of the secretary. 1 If O'Fallon expressed the ideas of the company, there is no question. It seems possible from the exaggerated tone of his letter that here, as in some other respects, he exceeded his authority. To pronounce a final opinion would be unsafe in the absence of O'Fallon's secret instructions, but the fact that he claimed those instructions as authority for his proposals throws strong suspicion upon the company. 2

- 1 The copy of this report in the library of the Maryland Historical Society has the following on the fly-leaf: "To George Washington Esqr; President of the United States From his most Ob^t; hum; Sert; Ax^r; Moultrie Presidt So; Car: Yaz: Com^y; July 13, 1791".
- 2 I have followed the usual view of Wilkinson's treason. This has been attacked by Mr. James Wilkinson of New Orleans in the Times-Democrat of April 15 and May 20, 1883, but the letters quoted by Gayarre seem to me decisive, strengthened as they are by Clark's Proofs of the Corruption of General Wilkinson and the letter of Yrujo to Cevallos (Henry Adams' History of the United States, III, 342).

O'F A L L O N I N K E N T U C K Y.

The action of Georgia in disposing of her western territory had not escaped the notice of the federal authorities. The matter was discussed by the Cabinet as early as April 1790,¹ and in August Washington issued a proclamation setting forth the law and treaties on the subject and directing compliance therewith.² One month later, O'Fallon, acting, we are told, on the advice of General St.Clair, addressed a letter to the President in which he asked permission to arrange for trade between the Indians and the people of his colony and to purchase more lands within the company's charter. "Without such trust, evils may happen". So far as is known, no notice was taken of this letter.³

In the meantime O'Fallon went busily on with his arrangements, even claiming for them the authority of Congress.⁴ By October he writes that all his preparations are completed. Extensive contracts were made for negroes and provisions, transportation and shelter. In his last dispatch to the company, dated Kentucky, November 6, he says that he has learned from his clerk

¹ Washington's Diary, 129 ff; Jefferson's Works, VIII, 457.

² American State Papers, Indian Affairs, I, 112, 172.

³ Ib, 115; Secretary's Report, I, 32, 33.

⁴ Indian Affairs, I, 114.

at New Orleans (Nola) and he need expect no opposition from the Spanish or Indians, and had accordingly "closed with the olden moment of opportunity" and resolved to send down at once three hundred troops. A second installment of three hundred troops and six hundred families would follow in February. 1 One part in particular of these preparations was destined to create trouble. As early as July O'Fallon had formed the design of raising a battalion of four hundred foot "as a defensive establishment for the first settlement. Understanding by this no more than a colony armed for its own defence and a fort for refuge, the company had signified their approval. 2 The battalion, however, was more than this. As mustered on September 13th it was a "military band, in full form and organization of a regular battalion" enlisted for eighteen months certain, and intended "to ensure the greater security of the company's rights, and their own; as well as to the rest of their fellow settlers' lives, liberties, and properties". Its five hundred and fifty-four men, commanded by Holzer, included Revolutionary soldiers and prominent citizens of Kentucky. According to rank each was to receive a bounty of from two hundred to six thousand acres. O'Fallon even declared that he

1 Secretary's Report, I, 37-39.

2 Ib., 33-34. Later he was ordered to disband the battalion.
Ib., III, 19.

had no doubt of the battalion being speedily put upon federal pay.¹
It was rumored that George Rogers Clark would be chief in command.²

Again did the federal government interfere, this time more effectively. A proclamation was published, warning O'Fallon's associates,³ and the district attorney of Kentucky was ordered to cause O'Fallon's arrest and prosecution according to law.⁴ In case these measures did not prove sufficient, military intervention was proposed.⁵ After this O'Fallon's extensive preparations suddenly disappear. Wilkinson deserted him, his associates fell away, and he married a sister of George Rogers Clark and settled in Kentucky. The company heard nothing further from him, and in August their agent left Walnut Hills. The services of the district attorney were not needed; Washington's proclamation had

1 Secretary's Report, I, 35; Military Articles of contract, etc. State Papers, Indian Affairs, I, 115-117. Five hundred acres were offered to the first woman who should land in the territory and five hundred more to her who should bring forth in it the first live child, bastard or legitimate.

2 Wilkinson to Philip Nolan, February 14, 1791, quoted in Claiborne's History of Mississippi, 157.

3 Ferno's Gazette, March 23, 1791; Georgia Gazette, April 14.

4 Jefferson's Works, III, 256.

5 Ibid.; Knox to St. Clair, Indian Affairs, I, 172.

been sufficient. ¹ Both Spain and the Indians had made vigorous preparations to oppose the expedition, and the consequences of a collision might have been serious. ² The federal authorities insisted upon and carried the point that the Indians had a right to their lands independent of the States within whose limits the lands lay and that no claim to such territory was valid unless based on a treaty held with the consent of the United States. ³

¹ Wilkinson to Nolan, ante; Pope's Tour through the Southern and Western Territories of the United States, 29; Forman's Journal, 52; Marshall's History of Kentucky, I, 372, 373; State Papers, Public Lands, I, 165; Ferno's Gazette, May 4, 1791, and other newspapers of the time. No record of a prosecution of O'Fallon exists, either in the Department of Justice or in the District Court.

² Miro's letter, ante; Georgia Gazette, January 6, 1791; Pope's Tour, 28, 29.

³ Cf. Jefferson's Works, III, 280, VIII, 437.

A T T E M P T S A T P A Y M E N T.

Efforts to settle the lands had failed; efforts to complete the purchase failed also. On August 13, 1790, the company paid into the state treasury in Georgia paper medium the amount of \$2,703.56, and on September 11 a further payment of \$2,142.86 was made. 1 On the nineteenth of December, 1791, just before the expiration of the period allowed by the act, representatives of the company tendered the State treasurer the remainder in South Carolina paper money, Continental money of 1776, and Georgia certificates of various dates. 2 This the treasurer declined to receive, and a formal certificate of such tender and refusal was given. 3 The earlier payments remained in the treasury. The State authorities held that the act contemplated payment in specie only and that, if any doubt had existed on this point, it was removed by a resolution passed by the legislature in July, 1790, directing the treasurers after the following August to receive only gold and silver in discharge of debts due the State. 4

1 Supreme Court papers, E and F.

2 Specimens are on file with the papers in the Supreme Court.

3 Supreme Court papers, G.

4 Ibid., C; State papers, Public Lands, I, 301.

THE SOUTH CAROLINA COMPANY IN THE
SUPREME COURT.

When the company is next heard from, it is in the Supreme Court of the United States. In 1796 through their attorney, Jared Ingersoll, they filed a bill in equity against the State of Georgia and the Georgia and Georgia Mississippi companies, grantees of the lands under the sale of 1795, who, it was alleged, had purchased with full knowledge of the prior claim. The court was asked to decree that their interest be held absolute and a grant issue on paying the amount due in any money current in Georgia. 1 The only ones to file an answer were the members of the Georgia Mississippi Company, who denied previous knowledge of the complainant's title and urged that, having disposed of the land before the bill was filed, they ought not to be required to furnish documents. The case was set for a hearing in August, 1797, and adjourned until the next term. In January, 1798, the eleventh amendment to the Constitution was declared in force. Its effect was to put an end to all suits then pending between a state and citizens of another state, 2 and as the Yazoo suit was of that char-

1 The court was also asked to determine what interest, if any, Washington's heir could have in their claim, since Washington had dissipated the funds of the company to a far greater amount than his contribution. For a later petition in behalf of Washington, see House Journal, 10th Congress, 166.

2 Hollingsworth vs. Virginia, 3 Dallas, 378.

acter, all proceedings in it were stopped. 1

THE COMPANY BEFORE CONGRESS.

One more resort was left; the company might appeal to Congress. 2 The Georgia cession of 1802 had left to Congress the task of settling with the land claimants in the Mississippi territory, and Madison, Gallatin, and Levi Lincoln were appointed to receive petitions and report. In their petition to these commissioners the company, maintaining that they had fulfilled their part of the contract with Georgia, claimed indemnification for the loss of their lands and for the expenses incurred in connection with the grant,³ with full consideration of the loss of "the most precious years of their lives; and the sacrifice of that domestic happiness, which it is beyond the power of language to express". The question of their compliance with the conditions of the grant turned largely on the medium of payment which the act

- 1 Moultrie et al. vs State of Georgia et al., papers of the Supreme Court, 1798; Public Lands, I, 167.
- 2 Appeal had been made to the executive after the expiration of Washington's term. See John Adams' Works, VIII, 551.
- 3 The United States was asked to compensate the company for the money advanced to O'Fallon, who was engaged, not only in raising an expedition illegally, but, if we are to believe his own letters, in founding a settlement independent of the United States and dominated by Spain!

contemplated. On its face the act simply directed to be paid "the amount of sixty-six thousand nine hundred and sixty-four dollars". That payment in paper was thus meant could be shown by collateral evidence only. For this purpose the company introduced the testimony of several who had been members of the legislature in 1789 and had understood that the lands were to be paid for in paper, as well as a protest in which the Speaker of the House and thirteen others had objected to the sale because it permitted payment in audited certificates.¹ Attention was also called to their petition of 1789, offering payment "in public securities or the money of the state".

The commissioners reported February 16, 1803, that in their opinion the companies had no equitable claim upon the government for the land or for compensation. In the following December the company preferred their claim directly to Congress. This was referred to a committee of which Nicholson was chairman, and on January 7, 1804, they reported that they were decidedly of the opinion that the company had no claim whatever upon the United States. They held that the act should be interpreted by itself, and that if extraneous matter were to be brought in, the resolution of June, 1790, forbidding payment in certificates, would be fatal to the petitioners' claim. The House resolved to give the company

¹ Supreme Court papers; Georgia Gazette, January 7, 1790.

one more chance. On the sixteenth of January ~~Haultrie~~ was heard
in their behalf at the bar of the House and the matter was re-
committed. The opinion of the committee remaining unchanged, in
March their report was laid on the table and the whole subject
was dropped. 1

1 Annals of Congress, December 28, 1803, January 7, 11, 17,
March 13, 1804; State Papers, Public Lands, I, 133, 165-171,
197; Supreme Court papers.

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P A T R I C K H E N R Y
A N D T H E V I R G I N I A Y A Z O O C O M P A N Y.

In the preface to the Fifth volume of the Virginia Calendar of State Papers 1 Mr. Sherwin McRae speaks at some length of the dangers that threatened the United States in this period through the great schemes of land speculators. Our escape from these schemes, he tells us, was owing to the patriotism and public virtue of Patrick Henry, who in a deposition made in 1777 2 says that on becoming a member of the first Virginia convention and the first Continental Congress "he determined with himself to disclaim all Concern and Connexion with Indian Purchases", although shares were frequently offered him. The reasons given for this resolution were the enormous extent of the purchases, the probability of being called on to decide disputes over such claims, and, in event of war, the likelihood of the soil being claimed by the American States - a reason which may indicate the man of business as well as the patriot. Thus, according to Mr. McRae, the great evils involved in the success of the Indiana and New Madrid companies were avoided.

Although his action in these circumstances deserves

1 Pp. IV - VII.

2 Virginia Calendar of State Papers, I, 289. See also Collins' History of Kentucky, II, 493.

credit, Patrick Henry did not always hold aloof from land companies. The opportunities for successful investment were too evident to escape the eye of one who saw the good qualities of lands so readily. 1 In the summer of 1789 he began to enquire of Grayson, then Senator from Virginia, respecting the title to the lands in the region of Natchez and the attitude of Spain toward the navigation of the Mississippi and emigration from the United States. 2 Assured that the territory unquestionably belonged to Georgia, Henry, with Judge Paul Carrington, David Ross, Abraham B. Venable, Francis Watkins, and others, later in the same year formed the Virginia Yazoo Company for the purchase of lands from the State of Georgia; and, recognizing the advantages which the South Carolina Company claimed, they made overtures for a consolidation. 3 When this attempt failed, they petitioned the Georgia Legislature and received the grant described above. Their plans, they declared, did not involve immediate colonization. Every person was expressly forbidden to settle within their bounds, their intention being "first to complete their payments to the State for

1 M.C.Tyler's Patrick Henry, 541.

2 See Grayson's letters of June 12 and September 29 in L.G. Tyler's Letters and Times of the Tylers, I, 165-171.

3 Report of the Secretary of the South Carolina Company, I, 23.

the Lands purch'd; next to quiet the Indian claims agreeably to Law, and to have the permission and approbation of the General Governm't for the settlement, and that the first Emigrants shall be accompanied with civil & military officers Legally appointed".¹

With this exception the history of the company closely resembles that of the South Carolina Company. Two small payments were made, the later tender in full was refused, and the earlier amounts were refunded to the company's agent, whose acceptance drew from them a strong protest. It was agreed to bring suit against the State and counsel was retained for that purpose, but of this nothing came. Their petition was presented to Congress along with the one from South Carolina and shared the same fate. Before this, however, arrangements had been made to compromise. In the fall of 1794 John B. Scott had been sent to Georgia to obtain from the Legislature a fulfillment of the contract and, if necessary, to make concessions. On the refusal of the Legislature to accept his proposals he proceeded to form another company, called the Upper Mississippi Company, which soon obtained a large grant of territory. Whether Scott's large share in this purchase was for himself or for the company appeared to the congressional committee a ques-

1 David Ross to Governor Randolph, April 10, 1791, Virginia Calendar of State Papers, V, 188. Similar expressions were credited to Henry, but with the significant addition that, if the protection of Congress were not granted, they would have recourse to their own means. Washington's Diary, 163.

tion of such intricacy that no satisfactory conclusion could be drawn. The participation of the company as a whole seems doubtful. 1

Patrick Henry's relations with the Virginia Yazoo Company are especially interesting by reason of certain charges made by Jefferson in a manuscript first published in 1867. 2 This manuscript, whose genuineness has not been questioned, is evidently the one furnished Wirt while he was preparing the life of Henry. The parts relating to the Yazoo purchase are as follows: "about the close of the war he (Henry) engaged in the Yazoo speculation & bought up a great deal of depreciated paper at 2/ & 2/3 in the pound to pay for it. x x x x x x from being the most violent of all anti-federalists however he was brought over to the new constitution by his Yazoo speculation, before mentioned. the Georgia legislature having declared that transaction fraudulent & void, the depreciated paper which he had bought up to pay for the Yazoo purchase was likely to remain on his hands worth nothing. but Hamilton's funding system came most opportunely to his relief, and suddenly raised his paper from 2/6 to 27/6 the pound. Hamilton became now his idol", etc.

1 Public Lands, I, 172-178, 197-203.

2 It appeared first in the Philadelphia Age and was reprinted in Dawson's Historical Magazine, August 1867 (New Series, Vol.II, No.2).

Henry's cause was taken up by his grandson, William Wirt Henry, who soon published a reply.¹ With this we are concerned only so far as it relates to the Yazoo question, but it is just here that it is least conclusive. It is maintained that no improper conduct can be alleged respecting the grant of 1769, the only one in which Henry was interested, as the companies "paid no money and got no land". Further, "it could not have been possible, as stated by Mr. Jefferson, that the Act of Georgia, which passed in 1796, depreciated the paper held by Mr. Henry to two shillings and six pence, when the system of Hamilton had been in operation for six years, and had given a greater value to that paper from its commencement; nor could the Act of Congress of 1790 have come most opportunely to Mr. Henry's relief, in 1796, and raised his paper depreciated by the Act of Georgia of that year". It is also urged that the assumption scheme was opposed by Henry in the Virginia House of Delegates.

It would be easy to show that this reply, in spite of its obvious misquotation of Jefferson, is quite beside the point.² This is rendered unnecessary by a letter of 1791, in which, what-

¹ Reprinted from the Richmond Dispatch in the Historical Magazine for December, 1867.

² The reply is accepted by Tyler (p.342). Wirt (edition of 1831, p.419) mentions the charge without attempting to disprove it. Hildreth (IV, 143) seems to be mistaken in connecting Henry with the fraud of 1790.

ever the confusion in the later manuscript, Jefferson's expressions are perfectly clear. In this letter, which seems to have escaped his critic, he says: "Arthur Campbell has been here. he is the enemy of P. Henry. he says the Yazoo bargain is like to drop with the consent of the purchasers. he explains it thus: they expected to pay for the lands in public paper at par, which they had bought at half a crown a pound. since the rise in the value of the public papers, they have gained as much on that as they would have done by investing it in the Yazoo lands; perhaps more, as it puts a large sum of specie at their command, which they can turn to better account. they are, therefore, likely to acquiesce under the determination of the government of Georgia to consider the contract as forfeited by non-payment". 1

It seems certain that the Virginia Yazoo Company had on hand a large amount in Georgia certificates, which in 1789 had been worth only two shillings six pence in the pound, ² and that the value of these certificates was largely increased by the assumption of State debts. In this way the company received considerable compensation for the loss of their lands, and in the profits of the company Henry doubtless had a share.

1 Jefferson to Washington, April 24, 1791, Works, III, 21-22, MSS. State Department Archives. See also his letter to Gouverneur Morris, Works III, 196.

2 Charlton's Life of James Jackson, Part I, VI-VII; Post st of minority of Georgia Legislature, Georgia Gazette, January 7, 1790; State Papers, Public Lands, I, 166, 172.

THE TENNESSEE COMPANY.

The history of the Tennessee Company centres about Zachariah Cox, one of the most energetic adventurers in the Southwest. Cox had occupied lands near the Muscle Shoals in 1785 and saw clearly the commercial advantages of a settlement in that region, commanding as it would the trade of the Tennessee and leading by easy portages through the Tombigbee to the Gulf. After the front of 1789 had been secured, he and his associates, including John Sevier and many prominent men in East Tennessee, announced that they would embark January 10, 1791, for the purpose of forming a settlement near the Muscle Shoals. Liberal inducements were offered, and in spite of warnings from the President and Governor Blount eighteen men joined in erecting a block-house and other works of defense, but were forced to withdraw by the arrival of a party of Cherokees. For this offense Cox and his companions were twice indicted, each time with no result. Two small payments were made to Georgia and the remainder of the purchase money was retitled, just as in the case of the other companies. 1

1 State Papers, Indian Affairs, I, 112, 113, 115, 120, 172, 173, 273; H. Hood's Civil and Political History of Tennessee, I, 9, 27, 28; Putnam's History of Middle Tennessee, 351, 341; Ramsey's Annals of Tennessee, 550, 551; Washington's Works (ed. Sparks) X, 195; Papers relating to a settlement by Z. Cox.

From the speech of an Indian chief it would seem that Governor Blount had some connection with this company. This is not the best sort of evidence, but many of Blount's friends were interested and he himself was a shareholder in the purchase of 1790. (Speech of Bloody Fellow at Philadelphia, January 7, 1791, Indian Affairs, I, 204, 205; Putnam's Middle Tennessee, 354; Public Lands, I, 243. Cf. also Report of the Committee on Blount's Impeachment).

Cox was not so easily disheartened. Further preparations failing to secure a settlement, his company came forward again as a purchaser in 1795. Many of the other shareholders resolved at a large profit, but Cox withdrew most of his money after the failure of his commercial plans. We find him petitioning Congress for a loan to enable him to carry on trade with the Indians, opposed by troops when attempting a settlement, arrested at Natchez for opening a land office, escaping at night only to be recaptured at Nashville, planning canals to connect the Tennessee with the Tombigbee, and finally ending his restless life at New Orleans. 1

- 1 Public Lands, 244 (reservation for canals), 150, etc; Claiborne's Mississippi, 153, 157; Haywood's Tennessee, 455, 456; Annals of Congress, March 30, 1796; State Papers, Miscellaneous, I, 158; Cox's Estimate of commercial advantages by way of the Mississippi and Mobile Rivers, to the western country.

Tenne & see

Savannah River

Upper Mississippi
Company

Tennessee
Company

Georgia River Company

Mississippi.

Georgia
Mississippi
Company.

Alabama.

Habers
Montgomery

Habers

61 Jan 17 15

II.

THE LAND COMPANIES OF 1794.

THE SECOND YAZOO SALE.

The failure of the ventures of 1790 did not diminish the fever of speculation. While the authors of the "Pine Barren Speculation" were making enormous profits in the South of Georgia, 1 the Legislature was importuned for a second grant of western territory. The first proposition came on November 12, 1794 from John Wereat, agent for Albert Gallatin, A. J. Dallas, and Jared Ingraham, who offered to buy all the tract formerly granted to the South Carolina Company at the price which that company was to have paid. In this Wereat probably exceeded his instructions; certainly his principals disclaimed all further connection with his proposals. 2 Wereat's offer was small, however, compared to those which soon followed. Petitions were received from four companies asking for the grant of the greater part of the State's western territory on the payment of \$300,000. These were referred to a joint committee, which on December 3 brought in a bill embo-

1 See Chappell's *Miscellanies of Georgia*, II, 43-53.

2 *Vindication of the New England Mississippi Land Companie*, 63, quoting *Journal of Georgia House*, page 10.

aying the companies' proposals. Another proposition from Wercat was rejected,¹ as were all other amendments, and the bill went to Governor Matthews for signature. In spite of a strong appeal from those interested it was vetoed. The Governor's objections were not based on constitutional grounds; he doubted whether the time had arrived for disposing of the territory, and thought first, if it was the proper time, the principle of monopoly was bad, that the price was too low, and that sufficient reservations had not been made for the State and its citizens. A bill framed to meet these objections was then introduced. Again Wercat appeared and outbid the other companies, but with the same success as before.² The Legislature hurried the bill through, the Governor yielded, and

¹ Ib., 15, 16. He was associated with William Few, late United States Senator from Georgia, General Twiggs, and others, together forming the Georgia Union Company.

² The refusal of Wercat's offers has generally been considered a crowning proof of the corruption of the Legislature. It should, however, be said that his security was considered insufficient and the whole plan regarded as really a scheme on his part to pay a fraction of a cent an acre for the chance to sell at a profit in the course of a year. The fact that each of his later proposals was made after the arrangements of the others were well advanced gives color to the suspicion that his real design was to force the other companies to buy him off. C. New England Vindication, 66, 71, and State of facts, etc., 32 ff.

it became a law January 7, 1790. ¹

By this act the greater part of later Alabama and Mississippi was sold for a cent and a half an acre to four sets of purchasers. The lands of the Upper Mississippi Company lay in the extreme northwest, stretching southward twenty-five miles from the State boundary line and eastward from the Mississippi to the Tennessee. ² The price was \$35,000. For the sum of \$60,000 the Tennessee Company obtained much the same territory as in 1789. The southwest was the region of the Georgia Mississippi Company, which paid \$155,000 for a grant bounded by the Mississippi, the Tombigbee, and latitudes $32^{\circ} 40'$ and $31^{\circ} 16'$. The largest share fell to the Georgia Company. Its seventeen million acres reached from the Mississippi to the Alabama with 34° as the northern limit and $32^{\circ} 40'$ as the southern except east of the Tombigbee, where it dipped to 31° . For this they were to pay \$250,000. In each case a part (generally one-fifth) of the purchase money was to be deposited before the passage of the act. Payment of the remainder

¹ Steven's History of Georgia, II, 167 ff.; Public Lands, I, 155, 157. Governor Matthews' conduct in signing the bill has been the subject of much discussion. It has generally been held to be due to weakness rather than corruption. See White's Statistics of Georgia, 50; Chappell's Miscellanies, II, 87; Harden's Life of Troup, 96.

² See map, page 34.

was required before November 1, 1795, and was to be secured by a mortgage on the land. Two million acres were reserved for other citizens of Georgia. Their subscriptions entitled them to membership in one or other of the companies and their payments counted as part of the companies' purchase money. The State gave no guarantee against other claims and was not to be responsible for peace with the Indians. After the completion of certain Indian negotiations south of the Oconee the companies could apply for the concurrence of the United States in extinguishing the Indian title to their lands and within five years after such extinguishment must form settlements, a provision which indicates the speculative character of the transaction. The lands were declared free from taxation until their inhabitants should be represented in the Legislature. Sale to any foreign power was prohibited.¹

One of the noticeable features of the speculation is the number of prominent men who were engaged in it. James Gunn, the leading member of the Georgia Company, represented Georgia in the United States Senate. Matthew McAllister, his associate, was Federal attorney for the Georgia district. Wade Hampton, grantee in two companies, was one of the largest planters in South Carolina.

¹ Act in Public Lands, I, 152; Indian Affairs, I, 511; Watkins' Digest, 507.

line, a member of Congress, and a general in the War of 1812. 1
Other Congressmen were Robert Goodloe Harper, Thomas Glascock, and
Thomas P. Carnes. 2 Nathaniel Pendleton a federal judge, and
William Stith, one of the two judges of the Superior Courts of
Georgia, were implicated. 3 James Wilson, of the Supreme Court
of the United States, held shares to the amount of at least 750,000
acres, and, it is asserted, was influential in securing the sale. 4
Tennessee was represented by William Blount and John Sevier.

1 For an attempt to extenuate his conduct in the matter, see
the Charleston City Gazette, May, 1810, and cf. his letter
in Public Lands, I, 197. Further mention of his connection
with the lands in Thomas' Reminiscences of the Last Sixty-
Five Years, I, 60; Gallatin's Writings, I, 170.

2 See lists of shareholders, Public Lands, I, 141, 143, L 0-246.

3 Hamilton's Works (ed. Lodge) VIII, 372; Chappell's Miscel-
lanies, II, 95.

4 Chappell, 93, 94; White's Statistics, 50.

THE RESCINDING ACT OF 1796.

The announcement of the sale produced great popular indignation in Georgia. It was felt that the Legislature had given away a quantity of the public property sufficient, if properly administered, to yield a large sum to the State and furnish lands in abundance to all the citizens. Many of the purchasers were notorious speculators, many were residents of other states. Worse than all, many were members of the Legislature which made the sale. "A more flagrant case of wholesale legislative corruption had never been known".¹ With but one exception, every member who voted for the act was a shareholder in one or more of the companies. "Georgia became a perilous residence for all concerned in the speculation". Gunn was in several places burned in effigy. Threats of violence were frequent. Even before the bill was signed Governor Matthews received a remonstrance from William H. Crawford and other citizens of Columbia County. Now came a succession of newspaper attacks, of petitions, of presentations of grand juries.²

¹ Adams' John Randolph, 43.

² Compare the lists of shareholders with the votes in the Legislature. Public Lands, I, 141, 144, or Bioren and Duane's Laws of the United States, I, 533. See also the affidavits in Public Lands, I, 144-149.

³ Stevens, II, 478, 480; White's Statistics, 50, 51; Chappell, II, 114, 119-121; Gilmer's Sketches of some of the First Settlers of Upper Georgia, 196; Baile's Aurora, March 30, 1796.

After the adjournment of the "Yazoo Legislature" the first representative body to meet was the constitutional convention which came together in May, 1795. In consequence of the strong popular feeling that this body ought to abrogate the sale many memorials were sent in. The convention, however, had been elected at the same time with the preceding Legislature and was dominated by the same interests. Influenced by this and possibly doubting its power to take any action, the convention merely ordered "that such petitions be preserved by the Secretary and laid before the next Legislature at their ensuing session", adding that this was "a subject of importance well merit[ing] legislative deliberation".¹

When the new Legislature met, early in January, 1796, it was with the avowed purpose of abrogating the obnoxious act. James Jackson had resigned his seat in the United States Senate and gone home to become a candidate for the Georgia House. As leader of the "Anti-Yazoo" party he had published a series of letters to the people, in which he attacked the constitutionality of the sale and showed the loss that would ensue to the State and the possibility of subsequent disaster.² Opposition to the sale had

¹ Journal of the Convention, 31. Fully one-third of the members were shareholders in the purchase.

² The letters of Sicilius to the citizens of the State of Georgia, on the constitutionality, the policy, and the legality of the late sale of western lands, in the State of Georgia. August, 1795.

osen the first in the elections up on all sides "Anti-slavery" just had been chosen. On the 15th of January the House appointed a committee of nine, with Jackson as chairman, to examine and report concerning the validity of the grant. A week later the committee reported a bill, together with proofs of corruption which were ordered to be entered in the journal of the House. February 13, the bill became a law.¹

The rescinding act is an interesting document. It sets forth that the act of 1795 was in direct contravention of that part of the State Constitution which empowered the Legislature to make all laws and ordinances which they should deem necessary and proper for the good of the State and which should not be repugnant to the Constitution.² The good of the State had been disregarded by the waste of public resources and by the creation of great monopolies identical to republican government. The Constitution had been violated by not organizing the territory into counties with representation in the Legislature and liability to taxation.³ Power to alienate the public land had not been delegated by the Constitution and could only be exercised by the people through

¹ Stevens, II, 465-467; Public Laws, I, 144-149; newspapers of the time.

² Article I, section 13.

³ Article I, section 17, giving the assembly power to lay out new counties and assign them representatives.

their representatives in convention. But the grants have been fraudulently obtained was proved by the evidence which the Committee had collected. "Were the powers of one Legislature over the acts of another to be questioned", the authority of this Legislature had been strengthened by the action of the late convention in referring the matter on it and by the absence of a court, "if the dignity of the State would permit her entering one, for the trial of fraud and collusion of individuals, or to contest her sovereignty with them, whereby the remedy for so notorious an injury could be obtained". So much, fully three-fourth¹, is preamble. Although it shows unmistakable marks of Jackson's hand, it indicates the popular sentiment of the State and serves as an illustration of certain widespread political opinions. When the repeal became a subject of discussion, its advocates drew their arguments chiefly from this preamble. The law goes on to declare the sale of 1795 null and void and to provide for the destruction of all the public records relating to it and the return of the unexpended-money. To prevent future frauds on individuals, the Governor was required to promulgate the law throughout the United States. 1

Two days later the act of 1795 was publicly and solemnly burned by the State authorities. Tradition says that "fire from heaven

¹ Public Lands, I, 156; Watkins' Digest, 567; Parbury and Crawford's Digest, 573.

"was drawn up by a non-lawyer, but for this there is no contemporary authority.¹ Not satisfied with this violent destruction of documents, perhaps feeling some uncertainty as to the finality of the rescinding act, the constitutional convention of 1798 made the act a part of the Constitution. The territory of the State was declared to be alienable to individuals or companies only by consent of the free citizens, except where counties should first be laid off and Indian rights extinguished. By this section "the contemplated purchases of certain companies of a considerable portion" of the public lands had "become constitutionally void", and the next Legislature was directed to make provision for repayment.²

A new method of granting land was soon adopted. The public domain was surveyed and divided into small lots of uniform size, which were marked, numbered, and mapped. The certificates were then returned to the Surveyor General and thrown into a lottery-wheel, from which they were distributed by lot to each citizen.³

¹ Stevens, II, 491-494; Thomas' Reminiscences of the Last Sixty-Five Years, I, 59; Newspapers of the time. Cf. also Marbury and Crawford's Digest, 581.

² Article I, sections 23 and 24. Glasscock and Gunn refused to sign the new Constitution on account of these provisions. See Governor Jackson's message, January 10, 1790, in Georgia Gazette of February 14.

³ The first land-lottery was in 1803. See Chappell, II, 25-27; Hardon's Life of Troup, 185-193; Sumner's Andrew Jackson, 176; Clayton's Compilation of the Laws of Georgia (1800-1810), 100.

THE NEW CLAIMANTS.

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The legislatures of Georgia had done their best to undo the work of 1795, but the speculators were not to be so easily defeated. Many indeed took advantage of subsequent legislation to receive back their money,¹ but most of the others made haste to sell their lands outside of the State. Pamphlets setting forth the advantages of the lands and the title of the companies were prepared and circulated extensively throughout the Middle and Eastern States.² All the territory of the Upper Mississippi Company was sold in South Carolina.³ Agents of the other companies were sent to New England and opened an office in Boston, where they found a spirit of speculation highly favorable to their dealings. People flocked to them, excited by the higher prices asked each day. Purchases and sales followed fast. Buyers received only a general warranty; payment was partly in cash, chiefly in notes which the agents quickly disposed of. By February 24, 1796, when news of the proposed repeal arrived, large purchases had been made

1 Marbury and Crawford's Digest, 581, 503; Laws of 1812, 163; Harden's Troup, 30. List of those repaid in Public Lands, I, 150.

2 State of facts, showing the right of certain companies to the lands lately purchased by them from Georgia. Grant to the Georgia Mississippi Company, the constitution thereof, etc. Published by order of the directors.

3 Public Lands, I, 233, 2nd.

from the Georgia and Tennessee companies, while the Georgia Mississippi Company had on the very day of the passage of the rescinding act made a conveyance of eleven million acres for ten cents an acre. Many men of prominence soon became concerned - James Sullivan, Samuel Dexter, H. G. Otis, Perez Morton, Gideon Granger. "Every class of men, even watch-makers, hair-crossers, and mechanics of all descriptions, eagerly ran after this deception". Boston alone sank over two million dollars. 1

When the rescinding act was announced in Boston (March 1.), it became the chief local topic of conversation and gave rise to a newspaper and pamphlet controversy which continued several years. 2 Undiscouraged the purchasers organized and prepared to enforce their claims. Still the determined opposition of Georgia and the destruction of all records of the sale made recovery difficult, and the lack of any return on the large investment had produced much distress, 3 when the transfer to the United States of all Georgia's rights to the territory gave Congress power to compromise.

1 La Rochefoucauld's Travels, III, 341-345; Public Ledger, I, 210, 220-246, II, 885; Columbian Centinel, February 24, 1796; Report on the New England Mississippi Land Company, Senate Document No. 205, 23d Congress, first session.

2 Columbian Centinel, March 1, 1816. For the titles of some of the pamphlets see the bibliography.

3 Fisher Ames' Works, I, 215; La Rochefoucauld, III, 347.

THE GEORGIA CESSATION.

A copy of the act of 1795, sent to Washington just after its passage, had been transmitted to Congress as an object of magnitude which might deeply affect the peace and welfare of the country. The message was considered at length in both Houses, but, to the President's regret, two bills brought in to protect the Indians against intruders failed, perhaps because of partisan opposition. 1 A strict regulation of intercourse with the Indians was however obtained from the next Congress, 2 while a report of the Attorney General led to a long discussion over Georgia's titles, resulting in 1793 in the passage of a law which authorized the appointment of commissioners to adjust the conflicting claims of the two governments and receive any proposals of cession. 3 To this Georgia assented, appointing Governor Milledge and Senators Jackson and Baldwin as her commissioners, 4 while the United

1 Indian Affairs, I, 561, 558; Annals of Congress; Washington's Writings (ed. Sparks), XI, 18; J.C. Hamilton's History of the Republic, VI, 190. Cf. Fisher Ames' Works, I, 168.

2 Statutes at Large, I, 169.

3 Statutes at Large, I, 244, II, 69; Public Lands, 51, 71, 79.

4 Laws of 1800, 16.

States was represented by Madison, Gallatin, and Levi Lincoln, members of the new Cabinet.¹ In April, 1802, articles of cession were agreed upon and ratified as reported. ~ Georgia ceded to the United States all her rights west of the Chattahoochee in return for a payment of \$1,20,000 and a promise to extinguish all Indian titles by Council. The new territory was to remain to be admitted as a state, in alliance with Great Britain, Spain, and the Bourbon Act of 1775 were confirmed in the case of actual settlers prior to the Spanish evacuation. For these liberal terms Georgia compensated for the reservation of five million acres to settle other claims.

1 Instead of Timothy Pickering, Oliver Wolcott, and Samuel Sitgreaves, whom Adams had appointed. Public Laws, I, 2; Executive Journal of the Senate, January 5, 1802.

2 Public Law, I, 1.; Georgia Laws, Extra session of 1802, 2; Public Domain, 20,81. Cf. Jones and Blackmar in Miller's Bench and Bar of Georgia, I, 409.

THE COMMISSIONERS AND THE
YAZOO CLAIMS.

By a law of 1800¹ the federal commissioners were also directed to inquire into and report upon the claims of individuals in the southwestern territory, a task of difficulty and importance. Their report contains, besides documents on earlier British, Spanish, and Georgia grants, a great mass of material on the Yazoo claims, as the claims based on the sales of 1789 and 1795 had come to be called. In the opinion of the commissioners the claimants' title could not be supported, yet in view of the equitable considerations which most of them could plead and the great amount of litigation that would result from the confusion of claims, it was thought that a reasonable accommodation would be expedient. Rejecting the purchasers' propositions to compromise at twenty-five cents an acre (or about \$8,000,000 with interest from 1806), they recommended as the basis of a settlement either the remnant of the 5,000,000 acres reserved in the cession (after satisfying settlers' claims), or the option of receiving \$2,500,000 in interest-bearing certificates or \$5,000,000 without interest, to be shared among the companies in proportion to the purchase-money.²

¹ Statutes at Large, I, 549.

² Public Lands, I, 132-156.

THE CLAIMS IN CONGRESS.

This report reached the House, February 10, 1803, and became after some modification the act of March 3, the basis of the land system of the Mississippi territory. In this it was enacted that the residue of the reserved 5,000,000 acres should be applied to the quieting of such of the Yazoo claims as Congress might see fit to provide for. No claims should be satisfied unless proper evidence was exhibited before a fixed date, and the commissioners were empowered to receive further propositions of compromise. During the debate on the report the motion had prevailed to hear the claimants of 1795 before the bar of the House. This their agents declined on the ground of insufficient preparation, but they agreed to accept with certain amendments the proposed terms of settlement. Although the point was often overlooked in later discussions, the act expressly disclaimed recognizing or in any way affecting the claimants' demands. It merely made possible a future agreement, and hence the debates upon it are of slight importance.

¹ Statutes at Large, II, 229; Annals of Congress, February, 1803. Public Lands, I, 159.

JOHN RANDOLPH'S RESOLUTIONS.

When the real question of compensating the Yazoo partners came up, the claims met the determined resistance of John Randolph. Randolph had been in Georgia during the excitement which followed the grant of 1795 and had there become imbued with that spirit of violent opposition to the sale and everything connected with it which possessed him until the very year of his death and formed one of the few consistent elements in his erratic career. Then, too, he was a strict adherent of the doctrines of the Virginia school, and a denial of the validity of the rescinding act meant a denial of his most cherished theories of government. As for the claimants, they were to his mind as guilty as if they had been partners in the original fraud. The compromise was also odious because advocated by Madison, whose influence in the house, all the more dangerous in that he was a member of the Cabinet, threatened Randolph's leadership. Jealous of Madison, Randolph had great contempt for the Northern Democrats, who in general supported the claims. In his opinion they cared nothing for the principles of true republicanism, they were apathetic, eager only for the loves and fishes. In this he was not entirely wrong; certainly the Democrats of 1795 and the Democrats of 1804

¹ Garland's Randolph, I, 57. On the persistence of his opposition cf. Adams' Randolph, 160.

"These resolutions", it has been well said, "covered the whole ground; they swept at expense of fact, principles of law, theories of the Constitution, considerations of equity, like a flock of sheep into one fold to be sheared".¹ Both bill and resolutions came up in the committee on March 7. After the failure of attempts to give Congress power to revise the commissioners' findings, Randolph moved an amendment to the bill in order to test the question and was defeated, 45 to 37. Varner's attempt to postpone discussion of the resolutions then opened the debate. On the side of the Northern Democrats there was an evident attempt to suppress the resolutions. They had, they said, no right to consider them; any action upon them would be an infringement on Georgia's sovereignty. Macon replied that such objections should have been made before the resolutions were referred to the committee, while Randolph expressed his contempt for the "crocodile tears" shed in the cause of state sovereignty, a principle which would be equally violated by an acceptance of the claims. They need not, he threatened, attempt to get rid of the question by postponement; he meant to have the public learn, once or again, the

¹ Adams' L. Bul., 107.

could not long remain united, and the Yazoo question occasioned the first split.

Early in 1804 there was introduced into the House and referred to the Committee of the whole a bill authorizing commissioners to settle the Yazoo claims according to what they should deem the best interests of the United States. February 20, Randolph, in order "to place the subject in such a point of light that every eye, however dim, might see distinctly its true merits", offered a set of eight resolutions. They declared that the Georgia Legislature had never been empowered to alienate territory "but in a rightful manner, and for the public good"; that when the governors of any people had exercised their authority to the public detriment, it was the inalienable right of the people to revoke the authority thus abused; that the House had it in evidence that the Yazoo sale was corrupt; that the sale had been declared void by a subsequent Legislature, acting within its unfeigned rights and violating no constitutional provision; that the claims had been recognized by no act of the United States; and therefore that no part of the reserved five million acres should be appropriated to quiet any claims under the pretended act of 1790. 1

1 For this, as far most that follows, see the Annals of Congress or Benton's Abridgment, which is often quite satisfactory.

sense of the House on the resolutions.¹

Forced to rise, the committee whined almost unanimous leave to sit again, and three days later on a motion to postpone until December the resolutions were taken up again. A debate of some length followed, in which Rooney, John Randolph, and Thomas M. Randolph were opposed by Elliott and Lyon. Finally by a close vote the resolutions were postponed. Randolph had however succeeded in preventing any action on the subject and it disappeared for the remainder of the session.

"A YAZOO CABINET."

Early in the next session the claims came up again with a new set of memorials and petitions. A House bill which extended the time for recording evidences of title failed in the Senate, but the Committee of Claims made a favorable report on the petitions, recommending the appointment of three commissioners whose terms of compromise should be final. January 29, a resolution to this effect was reported from the Committee of the Whole,²

¹ "A whining, coaxing, threatening, and personally abusive speech", it was called by Mr. Critler (Life, Journals, and Correspondence, II, 160).

² Public Lands, I, L15.

and after ineffectual attempts to adjourn, the debate began.

Randolph set the tune in a long speech, a "fire and brimstone speech", Dr. Cutler called it.¹

Postmaster-General Granger had appeared as one of the agents of the New England Mississippi Company, an organization composed of the purchasers from the Georgia Mississippi Company. This impropriety on Granger's part drew Randolph into a vehement invective against him. "His gigantic grasp embraces with one hand the shores of Lake Erie, and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs.

x x x x x They buy, and sell corruption in the gross, and a few millions, more or less, are hardly felt in the account. x x x

When I see the agency that has been employed on this occasion,

I must own that it fills me with apprehension and alarm. x x x x

Are heads of Executive Departments of the Government to be brought into this House, with all the influence and patronage attached to them, to extort from us, now, what was refused at the last session of Congress?" Then, turning on the Northern Democrats, he said;

"What is the spirit against which we now struggle, and which we have vainly endeavored to stifle? A monster generated by fraud, nursed in corruption, that in grim silence awaits his prey. It is the spirit of Federalism! That spirit which considers the many

¹ Life, II, 182.

as made only for the few, which seeps in Government nothing but a job, which is never so true to itself as when false to the nation! When I behold a certain party supporting and clinging to such a measure, almost to a man, I see only men faithful to their own principles; pursuing with steady step and untired zeal, the uniform tenor of their political life. But when I see associated with them, in firm compact, others who once rallied under the standard of opposite principles, I am filled with apprehension and concern. x x x x x If Congress shall dare to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former Administration".

His confidence in the sufficiency of the legal argument had evidently weakened, for he adds: "The present case presents a notorious anomaly, to which the ordinary and narrow maxims of municipal jurisprudence can not, and cannot be applied. It is from great first principles, to which the patriots of Georgia so gloriously appealed, that we must look for aid in such extremity. x x x x Attoress and judges do not decide the fate of empires".

On the 31st the commissioners and claimants were defended by John S. Jackson, Madison's brother-in-law, in a long speech which was thought to show Madison's hand. Randolph broke forth
1 Adams' History of the United States, II, 210.

urgin, citing a supposed attempt of Granger to bribe a member to vote for his election. Granger wrote to once, demanding an official investigation, and when this was not granted addressed a letter to the Speaker in which he explained at length his relations with the New England Company and denied solemnly any use of improper influence. Lyon of Kentucky, one of the Democrats who had broken away from Randolph, held several mail contracts and thus felt himself attacked over Granger's shoulders. He now rose to defend the Postmaster-General in a speech full of personal abuse, calling Randolph a jackal and a madman with the face of a monkey.¹

So the debate dragged on until February 2, when a vote was reached and the resolution of the committee adopted, 63 to 58. Varnum, Eastis, and Elliot voted with the majority. Randolph carried but two votes in New England, the Middle States divided, and in the South eighteen votes, nearly all democratic, indicated a considerable revolt from his leadership. Nevertheless, he was again successful in defeating all attempts to compromise the claims.

1 On the debate cf. Cutler's Life, II, 122, 1-5 pp.

FILED OF THE CLAIMS IN CONGRESS.

In the next Congress the claimants applied to the Senate through Senator of South Carolina and the collector John Quincy Adams, and after a long struggle in committee a bill was brought in which failed first after the execution of proper releases on the part of the claimants Congress should provide by law for sufficient indemnification.¹ After the death of its strongest opponent, James Jackson, the bill passed by a vote of 19 to 11.² When it reached the House a motion to reject prevailed, 62 to 51, by a division which showed only ten southern votes in favor of the bill. In the debate Benton continued to emphasize the importance of the subject. "This bill", he said, "may be called the Omega, the last letter of the political alphabet; but with me it is the Alpha; it is the head of the divisions among the republican party; it is the secret and covert cause of the whole. This is the sub-

¹ J.Q.Adams' Diary, I,381,389,390,391,392,404,405,408,417,
also; Public Ledger, I,252.

² Benton's assertion (Abridgment, III,333,433) that Jackson died in the last of the many duels which his attacks on the Yazoo claims brought upon him, is not supported by contemporary authority. He died of dropsy (J.Q.Adams' Diary, I,411) "after a long and painful illness" (National Intelligencer, March 21,1806). On Jackson see the sketch of his life by Charlton (Augusta,1809) in the articles in Longacre and Herring's Portrait Gallery and Appleton's Cyclopedia of American Biography.

ject which has been moved off from day to day, merely that he
might not come into the other House, where its friends were
more numerous. Yes, a union has been formed between Cape Ann
and Barbadoes, and the Rio del Norte, a union of the East with
the West, x x x x and the nation is sold. x x x x The
whole Executive Government has had a bias to the Yazoo interest
ever since I have had a seat here. This is the original sin, which
has created all the mischief which gentlemen pretend to throw
on the impressment of our seamen, and God knows what; this is the
cause of those mischiefs which existed years ago".

In December, 1807, the Democratic Legislature of Massa-
chusetts passed a resolution which directed the Governor to peti-
tion Congress with regard to the Yazoo claims, requesting an im-
partial investigation and an equitable compromise. ¹ When Bacon
presented Governor Sullivan's memorial to the House and moved that
it be referred to a committee, an angry debate arose. The tone
of the Georgia members was particularly violent. Bibb moved im-
mediate rejection, while Troup, famous as Governor of the State
at the time of the Cherokee troubles, was inclined to throw the
petition under the table. Randolph's plea for harmonious rejec-
tion in order to prevent another schism in the party was met by
Crowninshield's denial of the existence of such a schism and

¹ Amory's Life of James Sullivan, II, 212.

Smilie's retort that there had been no revision until Randolph's deflection in the session of 1803-1806. The members' sense of fairness prevailed and the petition was referred, yet 71, and 37, only six northern members voting in the negative. The petition, however, quietly disappeared, along with one from sundry citizens of New York, 1 and when Joseph Story and a lawyer to appear before the bar of the House in behalf of the New England Company, his request was refused by a large majority. 2 A like fate befell a memorial of the New England Company presented in December, 1809, which was by a close vote referred to the Committee of Claims. Here, however, the committee did some work and the discharge by vote of the House from further consideration of the subject. 3

In this long course of opposition to the Yazoo claims Randolph's chief political motive appears to have been hatred of Madison and the Northern Democrats. He was exasperated by the defection of the Northern Democrats in 1803, while they were further alienated by his rancorous attacks at the next session. It became a common saying at Washington that there was no boink in nature but

1 This also came up in the Senate. J.Q.A.'s Diary, I, 113.

2 February 12, 1803. Cf. Lewis's Cabinet, 777.

3 Story's Story, I, 107; House Journal, April 9, 1810.

a Virginian rather so much as a New England Democrat.¹

Meanwhile the Federalists were but too anxious to seize the opportunity. Madison was as strict as ever committed to the policy of conciliation when Mr. Gallatin,² in Randolph's view wrote, yet by reason of his own private interests, & the Jackson's public defense of the claims he came to be considered a more decided advocate. The subject had passed the stage of political argument and had become a struggle for power between Madison and Randolph. S. Randolph, seconded by the Philadelphia Aurora, sought to brand Madison as a YANKEE man and thus destroy his influence among those with whom that term was a synonym for speculation and corruption. His aim became more evident as the Presidential election of 1804 drew near. The old Democrats, as told Monroe when he pressed him to become a candidate for the Presidency, were determined not to have

¹ Catler's Life, II, 169.

² Ib., 182, and c. 183 no. 191.

³ Galatin to Davis, Public Lens, I, 217.

⁴ Cf. the account of his conversation with Gibbs in J. Q. Adams' Diary, I, 344.

⁵ Abridged History of the United States, III, 119. On the same date prominence given the subject see G. W. Campbell in the Tennessee Gazette April 10, 1805.

a Yazoo President if he could avoid it. Even after the conservative nomination of Madison, Randolph and his son as his friends had lined up against the election of a man who had "forfeited his claim to public esteem by concluding a secret deal with the unprincipled speculators of the land companies - a dishonorable compact with fraud and corruption".¹ Such a policy could lead to no positive results. Randolph's resistance to the claims might gain him the public thanks of Georgia,² but his quarrelsome arrogance, nowhere else better exhibited, had destroyed his political influence and left him the leader of a powerless faction persistent to the last in its renunciation of Madison and Yazoo.³

¹ Randolph to Monroe, Adams' Randolph, 203.

² Baltimore Federal Gazette, March 1, 1808; Hildreth, VI, 1.

³ November 13, 1807. Clayton's Compilation, 680; Harden's Tracts, 12; Miller's Bench and Bar of Georgia, I, 33%.

⁴ Cf. Randolph's speech in the House, March 13, 1807.

THE DECISION OF THE SUPREME COURT.

The House might well discharge this committee; Chief Justice Marshall's decision had put an entirely new face on the subject. Little confident of securing justice at the hand of Congress, the claimants frequently requested that provision be made for a judicial determination.¹ This, they conceived, required no authorization or special act of legislation, since they were prevented by a law of 1807 from naming upon the lands to try the title.² Forecasting the probable result of such a trial of the case, Randolph and his party preferred to keep the question on the old basis and shout "Yazoo" whenever the claims came up. Finally, however, a feigned issue was arranged and a favorable decision obtained from the Circuit Court. In March, 1809, the cause was argued in the Supreme Court, John Quincy Adams and Robert Goodloe Harper representing the defendant in error and hence advocating the claims.³ A defect in the pleading necessitated a re-argument at the next term, when Adams' place was taken by Story, soon to decide similar cases upon the bench.⁴

¹ Public Lands, I, 203, 204, 206, 207, 207.

² Statutes at Large, II, 115: C. Quincy's speech in the House, January 4, 1808.

³ J.Q. Adams' Diary, I, 142.

⁴ Story's Story, I, 195.

On March 1., 1810, Marshall rendered his opinion. It defines the position taken by Alexander Hamilton in 1798,¹ namely, that the preceding act was an infringement of the obligation of contracts and therefore contrary to the Constitution of the United States. A grant, whether public or private, is an executed contract. When an act is passed with the requisite forms of law is passed by a Legislature acting within its constitutional powers, a court cannot sustain in a suit between individuals the allegation of fraud in its passage. The people can act only through their agents, and when, as here, they do so, within the powers conferred, their acts are the acts of the people. Even if a court had examined the title and set it aside on account of fraud, it could not make innocent third parties suffer by the decision.

Such, very briefly, is the substance of one of the most important constitutional decisions in our history, important since the doctrine as here laid down and afterward extended has largely determined the relation of the States to the corporations which they have chartered. It seems clear that Fletcher vs. Peck, rather than the more famous Dartmouth College case, lies at the root of

¹ Fletcher vs Peck, 1 Cranch, 27.

² More's Description of Georgia, West of the Territory, 1.

the last interpretation of the law of public contracts. The decisive step was taken when provision designed to guard private contracts was extended to those of a public nature. If a grant of lands is a contract, such by inference, a grant of exemption from taxation, ¹ and such again is a charter of incorporation. ² This view is strengthened by the language of the latter decisions. New Jersey vs Wilson is distinctly based on the Yazoo case. Webster in his celebrated argument in the Dartmouth College case cites with assurance those cases and Turrett vs Taylor,³ in which Story has reaffirmed the principle of 1810. While Marshall's opinion in the Dartmouth College case rests on other grounds, nothing could be stronger on said point than Justice Hamilton's opinion that "if a doubt could exist that a grant is a contract, the point was decided in the case of Fletcher vs Peck"; or when Story's reasoning, which he says, after citing Fletcher vs Peck: "It appears, in the most unequivocal manner, that the grant of a State is a contract within the clause of the constitution now in question, and that it is likewise a contract not to rescind the rights granted." A similar, though perhaps

¹ New Jersey vs Wilson (1810) 7 Cranch, 180.

² Dartmouth Coll. vs Woodward (1819), 1 Weston, 315.

³ 10 Cranch, 40.

of a power or right does not exist". Carried to its logical conclusion, the principle of "no judicial nullity" of State contracts must give into constant threat the principle of eminent domain, a consequence hardly measured by Justice Johnson in disengaging from his opinion in *Fletcher vs Peck*. To limit the obligation of contracts by the theory of eminent domain "is mere law", John Randolph's proposition and we must remember; it is "state law having no which to meet another state".¹

THE COMPROMISE OF 1819.

Marshall's opinion did not find ready support or protest from the champions of States' rights. April 17, 1810, Randolph attempted in vain to get the House to file a Resolution in protest, evidently from a view to revising the doctrine. He desired that action, fearing "that an amendment or the filing of the House of Representatives without objection, particularly at the time when it was known to him, would save the Supreme Court of the Union, in their judicial decision on their part". Howay said that it was "a decision which turned all of every man's head in America principles may revolt at". More than one of his colleagues found in

¹ Adams' Narratives, 100. Cf. also Attorney Johnson in the Young Friends in Litter's opinion, 1811.

1813, when the House laid on the table a Senate proposal of compromise.

Early in 1814, the New England Company submitted a new memorial,¹ and again the bill for settling the claims passed the Senate by a large majority. The advocates of compromise now rested their arguments, not so much upon the equity of such a measure, as upon the endless litigation that must otherwise ensue, delaying the settlement of the territory and working hardship to many of its occupants. The passage of the bill by the House, finally accomplished by a vote of 84 to 76, was facilitated by the absence of Randolph, who had been defeated at the last election, and the disposition to conciliate the New England Democrats.² The act of March 31, 1814,³ appropriated \$5,000,000 from the proceeds of land sales in the territory to be shared among the companies in the following proportion: Upper Mississippi Company, \$3,000,000; Tennessee Company, \$600,000; Georgia Mississippi Company, \$1,500,000; Georgia Company, \$2,200,000; citizens' rights, including such shares as had accrued to the United States through operation of law, \$250,000. Commissioners were appointed to determine upon all claims finally and, after proper releases had been executed, to

¹ Public Lands, II, 877.

² Cf. Hildreth, VI, 464.

³ Statutes at Large, III, 116. Later amendments, ib., 192, 235, 294, 359.

divide these amounts pro rata among the cl. imants. Nothing was to be paid to those who had voluntarily surrendered the evidence of their cl. imants or received back any of the purchase-money, and all who rejected these terms were forever barred from pursuing their claims.

The commissioners designated by the act, Monroe, Dallas, and Bush, were on petition relieved, and Thomas Swann, Francis S. Key, and John Law were appointed in their stead. 1 Their tedious task was begun in 1815, and three years later the Treasury could report a final settlement which involved a payment of \$4,182,151.12. 2 Owing to the delay of Congress in providing for

1 Statutes at Large, III, 19.; Public Lands, II, 297.

2 State Papers, Finance, III, 181. List of rejected claims in Public Lands, III, 549.
On account of their failure to pay part of the purchase-money, the New England Company were not allowed to share in full measure of the compensation. Their appeal from the commissioners secured from Congress many favorable reports but no legislation. It was finally decided against them by the Court of Claims in 1861. See in particular Senate Document No. 205, 43d Congress, first session; Senate Document No. 1., 4th Congress, second session; 1 Mason, 191; 2 Watson, 181; 1 Court of Claims, 186; and consult under New England Mississippi Company Poor's Catalogue of Government Publications and the House List of Private Claims. For claims under the Tennessee Com'n., see 2 Opinions of the Attorney-General, 35; Reports of Committees, No. 23, 42d Congress, first session.

a settlement at the 8thims, much of this evident went, and so the
entire force remained, but no action was had, nor was there any
disclosure. This were secured but interesting; the parties of a
compromise probably just and unexceptionably expedient.

B I B L I O G R A P H Y.

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The best sketch of the Yazoo land companies is that by Alexander Johnston in Lalor's Cyclopaedia of Political Science (III,1127-1130). McMaster's account (II,479-480) is untrustworthy, and the note in the Narrative and Critical History of America (VII,534) is quite as bad. The chapter in A. H. Chappell's Miscellanies of Georgia is useful but diffuse and one-sided. Stevens' History of Georgia is of service. The only extended account was published by George White in 1852 (*The Yazoo Fraud*). See also his Statistics of Georgia, 46-51. There is a short article on the Yazoo Fraud in the centennial number of the Augusta Chronicle, May 1885. The chief original source is the volumes on Public Lands in the American Stat. Papers.

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Biographical Sketch.

I was born at Calcutta, Presidency
in - 1810. My education had
not been very good, but I have
been able to make up for it by
lent to people & taught myself in
1833 in the same school, now known
as the Alipore Model School. In the fall
of 1856, I entered the Government University,
from which I gained the Degree of Bachelor of Art
the following June. Since 1857 I have pursued
various studies in Boston and pursued science
at the Massachusetts University, acting as assis-
tant in the Botany Department from 1858 to 1861
and as Observatory in Boston until 1869.

Spent four years in

Bangalore.





